

UNREPORTED

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAC. APP.249/2007**

GENERAL MANAGER, HARYANA ROADWAYS

..... Appellant

Through: Mr. Yashpal Rangi, Advocate

versus

SAVITRI DEVI & ORS.

..... Respondents

Through: Mr. Navneet Goyal, Advocate

+ **MAC. APP. /2011**

SAVITRI DEVI & ORS.

..... Appellants

Through: Mr. Navneet Goyal, Advocate

versus

GENERAL MANAGER, HARYANA

ROADWAYS & ANR.

..... Respondents

Through: Mr. Yashpal Rangi, Advocate

%

Date of Decision : August 24, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed

- to see the judgment?
2. To be referred to the Reporter or not?
 3. Whether judgment should be reported in Digest?

J U D G M E N T

: REVA KHETRAPAL, J.

MAC. APP.249/2007 and MAC. APP. _____/2011 (to be numbered)

1. By this common judgment, it is proposed to decide both the aforesaid appeals as common questions of fact and law are involved in both the appeals.

2. The concise facts leading to the filing of the appeals are that on 11.07.2005 one Naresh Kumar met with a road accident while crossing the road at the Gopalpur Wazirabad Crossing, Outer Ring Road, Delhi, when he was hit by a Haryana Roadways bus bearing No.HR-62-0359 being driven at a high speed, rashly and negligently, and in complete violation of the traffic rules. On account of the forceful impact, the said Naresh Kumar (hereinafter referred to as “the deceased”) fell at some distance on the road and sustained fatal injuries. A criminal case bearing FIR No.341/2005 under Sections 279/304A IPC was registered at Police Station Timarpur against the

driver of the offending bus on the statement of an eye-witness, Head Constable Ramphal. A suit bearing No.294/06 claiming compensation in the sum of ₹ 25 lakhs for the untimely demise of the deceased in the aforesaid accident was filed by his legal representatives, viz. his widow, four sons and father, which culminated in the passing of the impugned judgment and award whereby and whereunder the Motor Accident Claims Tribunal awarded a total compensation of ₹ 9,85,216/- (Rupees Nine Lakh Eighty Five Thousand Two Hundred and Sixteen Only) to the legal representatives of the deceased payable by Haryana Roadways alongwith interest at the rate of 7.5% per annum from the date of filing of the petition. Aggrieved therefrom, the Haryana Roadways filed an appeal, being MAC. APP. No.249/2007 for scaling down of the amount awarded by the learned Motor Accidents Claims Tribunal and a cross-appeal thereto was filed by the claimants seeking enhancement of the same.

3. I have heard Shri Yashpal Rangi, the learned counsel for the Haryana Roadways and Mr. Navneet Goyal, the learned counsel for the claimants and scrutinized the records. It is proposed to deal first

with the contentions of Mr. Yashpal Rangi, who represents the appellant in MAC. APP. No.249/2007.

MAC. APP.249/2007 titled as “General Manager, Haryana Roadways vs. Savitri Devi & Ors.”

4. Mr. Yashpal Rangi, the learned counsel for the appellant, has assailed the quantum of compensation awarded by the learned Tribunal by raising a two-fold contention. His first contention is that the learned Tribunal failed to consider that the widow of the deceased, namely, Smt. Savitri Devi, subsequent to the death of her husband, is getting pension of ₹ 1,500/- per month from the Government Department where the deceased was working. The learned Tribunal, therefore, ought to have deducted the same while calculating the loss of dependency of the claimants (the respondents No. 1 to 6 herein). This would have scaled down the award amount to ₹ 6,50,000/- only.

5. The second contention raised by Mr. Rangi is that the deceased himself was guilty of contributory negligence in causing the accident, and this factor was not considered by the learned Tribunal while computing the award amount. It is submitted by the learned counsel

that the deceased himself had crossed the road negligently, inasmuch as there was no zebra crossing at the place of the accident. It deserves to be mentioned at this juncture that the second contention has not been raised in the grounds of appeal at all and the words “contributory negligence” are not mentioned therein. All that is stated is that the accident took place entirely due to the negligence of the *cyclist* himself.

6. In order to rebut the aforesaid contentions of Mr. Yashpal Rangi, Mr. Goyal, the learned counsel for the claimants, submits that the law is well settled that the pension drawn by the widow of the deceased cannot be taken into account for the purpose of computation of the loss of dependency of his legal representatives. As regards the aspect of contributory negligence, Mr. Goyal points out that the appellant has nowhere pleaded contributory negligence on the part of the deceased and that such a plea is not even raised in the grounds of appeal. The argument with regard to contributory negligence was, therefore, nothing but a last-ditch attempt to wriggle out of the judgment and award passed by the Motor Accidents Claims Tribunal,

whereby the liability of the award amount has been put at the door of the appellant.

7. Insofar as the argument with regard to deduction of pension is concerned, I find substance in the argument of Mr. Goyal that the pension amount cannot be deducted while computing the loss of dependency of the claimants. The Supreme Court, in a number of decisions, has drawn a distinction between amounts which are deductible from the compensation assessed on account of the accidental death of a person and those which are not so deductible, and has unequivocally laid down that the Motor Vehicles Act envisages and takes into account payment of compensation to the claimants only on account of accidental injury or death in a road accident, not on account of any other death. Thus, for instance, if there is natural death or death by suicide or serious illness or even death by accidents through train or air flight not involving a motor vehicle and any amount/s is received by the legal representatives of the deceased on account of such death, it would not be deductible under the Motor Vehicles Act. In the case of *Helen C. Rebello*

(Mrs.) and Others vs. Maharashtra State Road Transport Corporation and Anr., (1999) 1 SCC 90, the law was enunciated as follows:

“33. Thus, it would not include that which claimant receives on account of other form of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the “pecuniary advantage”, liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incidence may be an amount liable for deduction. However, our legislature has taken note of such contingency, through the proviso of Section 95. Under it, the liability of the insurer is excluded in respect of injury or death, arising out of, in the course of employment of an employee.

34. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is

significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family, which such person knows, under the law, has to go to his heirs after his death either by succession or under a will could be said to be the "pecuniary gain" only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicle Act. There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or any provisions of law.

35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act

is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured, or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter se between them and not to which, there is no semblance of any co-

relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.”

8. From the above, it is amply clear that the pension received by the widow of the deceased, which is payable irrespective of the cause of death, has no correlation with the amount received under the Motor Vehicles Act, which is occasioned only on account of death arising out of a motor vehicular accident. This being so, there can be no question of deducting the pension amount from the amount awardable to the claimants on account of loss of dependency of their bread earner. The first contention of Mr. Yashpal Rangi, the learned

counsel for the appellant, is accordingly devoid of merit and is, therefore, rejected.

9. As regards the aspect of contributory negligence, it may be mentioned at the outset that the First Information Report in the present case was registered by the Police of P.S. Timarpur on the information of H.C. Ramphal, who, on the date of the accident, was on patrolling duty alongwith Ct. Sohan Singh at the Gopalpur Wazirabad Crossing and an eye-witness to the accident. His version of the accident as set out in the First Information Report is identical with his testimony in the witness-box, where he appeared as PW4 to depose with regard to the manner in which the accident took place. In his deposition, PW4 H.C. Ramphal deposed that while patrolling at the crossing of Gopalpur Wazirabad, Outer Ring Road, after parking his motorcycle, he had seen a Haryana Roadways bus bearing No.HR-62-0359 coming from the Burari Chowk at a very high speed and when the said bus reached the Gopalpur Wazirabad Crossing, it hit a person named Naresh who was crossing the road from the Gopalpur side to the Wazirabad side. As a result of the forceful

impact, the said Naresh had fallen on the divider of the road. PW4 further testified that it was he who had stopped the bus and had apprehended the driver of the bus.

10. PW4 H.C. Ramphal was cross-examined by the counsel for the appellant, but, as noted by the learned Tribunal, nothing emerged in his cross-examination to impeach his credit worthiness, and his testimony remained unblemished even after the cross-examination. In his cross-examination, he categorically denied the suggestion put to him that the accident had taken place due to the carelessness and negligence of the deceased Naresh or that the driver of the offending bus was driving his vehicle at a normal speed and in his own lane. On a query put to him, PW4 categorically stated that the speed of the bus at the time of the accident was 55 to 60 kms. per hour and that the speed limit at the place of the accident was 40 kms. per hour.

11. Evidence in rebuttal was led by the appellant by examining the respondent No.7 Surjit Singh, the driver of the offending bus, as R2W1. To be noted that the said witness in his entire testimony did not dispute the factum of accident and that it was he who was driving

the bus of the Haryana Roadways bearing No.HR-62-0359 at the relevant time. His version of the accident as narrated in his affidavit by way of evidence (which evidently was got prepared by the appellant herein) is, however, at complete variance with the First Information Report as well as the testimony of PW4 - H.C. Ramphal, inasmuch as he stated that the bus driven by him had knocked down a cyclist.

12. It may be recapitulated that the case of the claimants as well as of the Police is that the bus had hit a pedestrian. Significantly also, in the written statement filed by the respondent No.7 (R2W1) before the Tribunal, it was not denied by him that he had hit the deceased while he was crossing the road near the divider of the road and that is why the contention has been raised by the learned counsel for the Haryana Roadways before this Court that the deceased who was a pedestrian was not crossing the road at the zebra crossing, and hence guilty of contributory negligence. Apparently, R2W1 in his affidavit by way of evidence sought to toe the line of the Haryana Roadways, which, in its written statement, had made out a case that the bus had hit a cyclist

and not a pedestrian, which is wholly contrary to the case of the police and the facts as recorded in the First Information Report.

13. It is, thus, amply clear that no clear cut evidence has been brought on record by the appellant with regard to contributory negligence on the part of the deceased. On the other hand, in his testimony PW-4 Ramphal stood his ground, and categorically stated that the deceased was crossing the road at the zebra crossing where there was blinking light signal. I see no reason to disbelieve the statement of this witness.

14. I pause here to notice that this zebra crossing is not shown in the site plan Ex.PW-4/B, but the site plan is a classic example of the careless and haphazard manner in which the police carries on investigation in road accident cases. The foot note under the site plan mentions “Point A” as the place of accident, “Point B” as the place where the deceased was stated to have fallen after being hit by the offending vehicle and “Point C” as the place where H.C. Ramphal and Ct. Sohan Singh were standing, but there is no corresponding marking of Points “A”, “B” and “C” in the site plan.

15. In view of the aforesaid, the findings of the learned Tribunal in respect of the rash and negligent driving of the driver of the offending Haryana Raodways bus are affirmed. Consequently, the appeal is dismissed.

MAC. APP. /2011 titled as “Savitri Devi & Ors. vs. General Manager, Haryana Roadways and Anr.”

16. The appellants in this appeal are the claimants who seek enhancement of the compensation awarded to them by the learned Tribunal on the ground that, in law, they are entitled to receive a sum of ₹ 29,83,392/- (Rupees Twenty Nine Lakh Eighty Three Thousand Three Hundred and Ninety Two Only) with costs and interest, if the guidelines laid down by the Hon’ble Supreme Court in the case of *Sarla Dixit vs. Balwant Yadav* reported as *AIR 1996 SC 1274* are followed.

17. In the course of arguments, Mr. Navneet Goyal, the learned counsel for the appellants, contends that the learned Motor Accidents Claims Tribunal, for the purpose of computing the loss of dependency of the appellants, erroneously assessed the salary of the deceased to be in the sum of ₹ 7,269/- per month, when the deceased was

employed as a sewer-man in the Municipal Corporation of Delhi on a gross salary of ₹ 8,179/- per month at the time of the accident. He further contends that the learned Tribunal calculated the average monthly income of the deceased without taking into account the future prospects of increase in the income of the deceased, which increase was inevitable keeping in view the fact that the deceased had a permanent and stable job with the Municipal Corporation.

18. It is next contended by Mr. Goyal that the deceased left behind him six legal representatives, being his widow, four sons and father and, in such circumstances, the learned Tribunal ought not to have deducted one-third of the income of the deceased towards his personal expenses and maintenance. Referring to the judgment of the Supreme Court in the case of *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121, Mr. Goyal contends that the deduction for the personal expenses of the deceased can at the most be one-fourth in a case where the number of dependent family members are between four to six.

19. Mr. Rangi, the learned counsel for the Haryana Roadways, on the other hand, sought to support the award insofar as the assessment of compensation is concerned and contended that no enhancement in the award amount was either warranted or called for.

20. Having heard the counsel for the parties and scrutinized the records of the Tribunal, I am inclined to agree with the learned counsel for the appellants that the assessment of the income of the deceased as made by the learned Tribunal is not in accordance with law, for the reason that the law is well settled that while assessing the income of the deceased any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayment of loans, etc., should not be excluded from the income of the deceased for the purpose of ascertaining the loss of dependency of the claimants. It has been so held in the case of ***Shyamwati Sharma and Others vs. Karam Singh and Others, 2010 (112) SCC 378***, where the Supreme Court observed as follows: (SCC, Page 380)

“We, however, make it clear that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance

premium, repayments of loans, etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.”

21. Thus, in the present case, the deductions made by the learned Tribunal towards GPF, GIS and GPF loan cannot be sustained and the income of the deceased is accordingly assessed at ₹ 8,179/- per month. Indisputably also, the deceased was in a stable job as a sewer-man in the Municipal Corporation of Delhi, and it is also proved on record that deceased was only 35 years of age at the time of the accident. Thus, the future prospects of increase in the income of the deceased also cannot be ignored. In the case of *Sarla Verma (supra)*, it has been laid down that as a rule of thumb where the age of the deceased is below 40 years and the deceased is in a permanent and stable job, a 50% increase in the income of the deceased is justified while assessing his income. The average monthly income of the deceased is, thus, assessed to be in the sum of ₹ 12,268.50 per month [₹ 8,179/- per month (actual income at the time of the accident) plus ₹ 4,089.50 per month (anticipated earnings of the deceased)].

22. As regards the deduction to be made towards the personal and living expenses of the deceased, where the deceased is married and the number of dependents of the deceased are between four to six in number, it has been laid down by the Supreme Court in the case of *Sarla Verma (supra)* as follows:

*“Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third ($1/3^{rd}$) where the number of dependent family members is 2 to 3; **one-fourth ($1/4^{th}$) where the number of dependent family members if 4 to 6;** and one-fifth ($1/5^{th}$) where the number of the dependent family members exceed six.”*

23. Thus, in view of the fact that the deceased in the present case left behind him six legal representatives, a deduction of one-fourth of the income of the deceased would be just and proper, leaving a balance of ₹ 9,201/- per month as the monthly loss of dependency of the appellants or say, ₹ 1,10,412/- as their annual loss of dependency. The said annual loss of dependency constitutes the multiplicand which has to be augmented by an appropriate multiplier. The learned Tribunal has adopted the multiplier of 16, and the said multiplier is

also the tabulated multiplier for the age groups of victims between 31 to 35 years of age, approved of by the Supreme Court in case of *Smt. Sarla Verma (supra)*. Thus calculated, the total loss of dependency of the appellants works out to ₹ 17,66,592/- (that is, ₹ 1,10,412/- x 16 = ₹ 17,66,592/-) [Rupees Seventeen Lakh Sixty Six Thousand Five Hundred and Ninety Two Only].

24. In addition to the aforesaid sum awarded towards the loss of dependency, the learned Tribunal has held the appellant No.1 entitled to a sum of ₹ 10,000/- towards the loss of consortium, and all the appellants entitled to a sum of ₹ 10,000/- towards the loss of love and affection of the deceased, ₹ 10,000/- towards the loss of expectancy of life of the deceased and ₹ 10,000/- towards the funeral expenses of the deceased. The award of the aforesaid damages under the aforesaid heads is upheld with the exception of the award of ₹ 10,000/- under the head of loss of expectancy of life of the deceased, which amount shall now be treated to be awarded under the head of loss of estate of the deceased. The appellants are, thus, held

entitled to a total compensation of ₹ 18,06,592/- (Rupees Eighteen Lakh Six Thousand Five Hundred and Ninety Two Only).

25. Accordingly the award amount stands enhanced by a sum of ₹ 8,21,376/-, which may be rounded off to ₹ 8,21,400/- (Rupees Eight Lakh Twenty One Thousand and Four Hundred Only) to be paid by the respondent–Haryana Roadways alongwith interest thereon at the rate of 7.5% per annum from the date of the petition till realization within a period of 4 weeks from the date of the passing of the order. Needless to state that award amount is inclusive of the amount of the interim award.

26. The award is modified to the aforesaid extent.

27. To conclude, “the appeal of the Haryana Roadways is dismissed and the appeal of the claimants is allowed to the extent stated above. There will be no order as to costs.

28. Records of the Claims Tribunal be sent back forthwith.

**REVA KHETRAPAL
(JUDGE)**

August 24, 2011
km